STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**12/04/00**	Bill No:	**SB 24**
Tax:	**Tax on Insurers**	Author:	**Polanco**
Board Position:		Related Bills:	**SB 1151 (2000)**

BILL SUMMARY:

This bill would create an insurance tax credit for insurance companies that invest in certified capital companies, which in turn would make investments in new businesses or expanding businesses.

ANALYSIS:

Current Law:

Under Section 12221 of the Revenue and Taxation Code, an annual tax is imposed on the gross premiums, less return premiums, of insurers doing business in this state, but not transacting title insurance.

In the case of insurers transacting title insurance, under Section 12231 a tax is imposed on all income except interest and dividends, rents from real property, profits from the sale of investments, and income from investments.

Under Section 12202 of the Revenue and Taxation Code, the rate of the insurance tax is 2.35 percent, except for specified premiums which are taxed at .50 percent. Under Section 12204 of the Revenue and Taxation Code, the insurance tax is imposed on insurers and their property in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

Under current law, Section 12206 of the Revenue and Taxation Code authorizes insurance companies that invest in low-income housing to compete for a gross premiums tax credit granted by the California Tax Credit Allocation Committee. The tax credit is also available under the Personal Income Tax Law and the Bank and Corporation Tax Law, but the tax credit is limited to an aggregate of $50 million under all three tax laws combined.

Current law also provides for a gross premiums tax credit in an amount equal to the amount of the gross premiums tax due from the insurer on account of the pilot project insurance for previously uninsured motorists under Section 12208 of the Revenue and Taxation Code. Additionally, Section 12209 allows as a credit against the amount of tax an amount equal to 20 percent of the amount of each qualified deposit made by an insurance company during the year into a community development financial institution that lends to urban, rural, or reservation-based communities in this state.

Proposed Law:

This bill would add and repeal Article 19 (commencing with Section 1115) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, which would enact the California Certified Capital Company Act to establish an incentive program for insurance companies to invest in certified capital companies, which in turn would make investments in new businesses or expanding businesses. The California Certified Capital Company Act would sunset on January 1, 2013.

This bill would also add Section 12211 to the California Tax on Insurers Law to allow as a credit against the gross premiums tax 100 percent of the amount of certified capital invested by an insurance company in a certified capital company. The amount of the credit may not exceed $2 million for each certified investor (insurance company) or its affiliates in any one year, and may not exceed $50 million in the aggregate for all certified investors or their affiliates in any one year.

This bill would also add Section 12422.1 to the California Tax on Insurers Law to subject to recapture any credit claimed pursuant to Section 12211 if the certified capital company to which the insurance company has contributed is decertified. The insurance company would be required to pay any required tax deficiency no later than 90 days after the receipt of a notice of deficiency.

Background

In 1998, Assembly Bill 168 (Torlakson, Ch. 9) increased the aggregate tax credit granted by the California Tax Credit Allocation Committee for qualifying low-income housing project investments from $35 million to $50 million for calendar years 1998 and 1999 only. Assembly Bill 1626 (Ch. 3, Stats. 2000, Torlakson) permanently increased the aggregate housing credit that may be allocated by the California Tax Credit Allocation Committee to $50 million annually.

During the 1999-2000 Legislative Session, two bills allowing credits against the amount of insurance tax were introduced. Assembly Bill 145 (Ch. 821, Stats. 1999, Vincent) added Section 12209 to the California Tax on Insurers Law to allow a credit against the amount of insurance tax in an amount equal to 20% of the amount of each qualified deposit made by a taxpayer during the year into a community development financial institution (CDFI). Assembly Bill 145 simply allowed the credit available under the Personal Income Tax Law and the Bank and Corporation Tax Law to be available under the Tax on Insurers Law.

Assembly Bill 1432 (Ch. 808, Stats. 1999, Oller) added Section 12208 to the Revenue and Taxation Code to provide a gross premiums tax credit in an amount equal to the amount of the gross premiums tax due from an insurer on account of pilot project insurance for previously uninsured motorists.

Also during the 1999-2000 Legislative Session, two bills which would have allowed a 50% credit against the gross premiums tax were introduced. Senate Bill 1465 (Polanco) was held in the Senate Rules Committee and SB 1151 (Polanco) was held under submission in Assembly Revenue and Taxation Committee. The Members of the Board voted to support SB 1151.

COMMENTS:

1. Sponsor and purpose. This bill is sponsored by the author and is intended to increase the availability of venture capital in under-served communities.
2. The State Board of Equalization (Board), the State Controller, and the Department of Insurance (Department) share administrative responsibility for the insurance tax program. Section 28 of Article XIII of the California Constitution states that the Board shall assess taxes under the Insurance Tax Law. Upon recommendation from the Department, the Board issues deficiency assessments in cases of underpayment of the tax by an insurer. The Board's responsibilities also include processing claims for refund and appeals. The Office of the Controller has the responsibility to collect the tax and issue refunds. The Department's responsibilities include return processing and auditing.
3. Suggested Technical Amendments. This measure provides that deficiency assessments made under Section 12422.1 shall become final and due and payable 90 days after service upon the insurer of the notice of deficiency assessment. It is suggested that the bill be amended to change when a deficiency assessment would become final and due and payable from 90 days to 30 days after service upon the insurer of the notice of deficiency assessment. Allowing a finality period of 90 days would not be consistent with the existing provisions of the Tax on Insurer's Law nor with the other tax programs administered by the Board.

   It is also suggested that this measure be amended to incorporate language directing the Department of Financial Institutions to notify the Department of Insurance when a certified capital company has been decertified. This notification should name the certified capital company decertified, the amount of gross premiums tax credits subject to recapture, and the amount of future gross premiums tax credits subject to forfeiture. This change would provide the Commissioner of the Department of Insurance with the information necessary to propose a deficiency assessment to the Board for each certified investor whose gross premiums tax credits are subject to recapture. Additionally, this change would assist the Department of Insurance in determining whether an insurer has claimed forfeited gross premiums tax credits. If it is determined that an insurer has claimed forfeited gross premiums tax credits, the Commissioner would propose a deficiency assessment to the Board under Section 12422 of the Revenue and Taxation Code.

   In addition, the following language is suggested to clarify that the Department of Insurance is not responsible for the decertification of a certified capital company, and that a deficiency determination would be issued pursuant to this section only in the case where the gross premium tax credits are subject to recapture:

   > 12422.1. (a) If the commissioner determines that ~~decertifies~~ a certified capital company has been decertified pursuant to Section 1125 of the Insurance Code, he or she shall propose in writing to the board a deficiency assessment for the amount of tax credit ~~each certified investor whose gross premiums tax credits are~~ subject to recapture ~~or forfeiture~~. The proposal shall set forth the basis for the deficiency assessment and the details of the computation.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board's formal position.

(b) This section shall remain in effect only until January 1, 2013, and on that date is repealed, unless a later enacted statute that is enacted before January 1, 2013, deletes or extends that date.

Furthermore, Board staff suggests adding language that would provide the necessary authority for the Board, the Department, and the Controller, in keeping with their current duties, to propose deficiency assessments, issue deficiency assessments, and deposit funds for tax related to the Act prior to the January 1, 2013 repeal date, but which are discovered after the statute has sunset.

Board staff is willing to work with the author's office in drafting amendments to the bill that would address these issues.

COST ESTIMATE:

The Board's administrative costs related to this measure would be absorbable.

REVENUE ESTIMATE:

This measure would authorize a tax credit equal to the amount of investment by the insurer in a certified capital company. This measure would limit the aggregate tax credit to $500 million for all certified investors during the entire period that the tax credits may be claimed. Accordingly, this measure could potentially decrease the General Fund by $500 million from 2002 to 2012, inclusive, but not to exceed $50 million in any one year.

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